STATE OF MICHIGAN

COURT OF APPEALS

RICHARD ALAN DUENAZ and MARGARET DUENAZ,

Plaintiffs-Appellants,

v

MARVIN BARNETT and THE LAW OFFICES OF MARVIN BARNETT, P.C.,

Defendants,

and

CARL S. CHRISTOPH and CHRISTOPH AND NEWMAN, P.C.,

Defendants-Appellees.

UNPUBLISHED
August 17, 2001

No. 224345
Wayne Circuit Court
LC No. 99-918546-NM

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendants summary disposition on statute of limitations grounds under MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants represented plaintiff Richard Duenaz on appeal in a criminal case. Plaintiffs filed this legal malpractice action on June 16, 1999, asserting that defendants breached their duties to provide proper representation by failing to challenge an improper conviction for assault with intent to commit second-degree criminal sexual conduct. That conviction was ultimately reversed after plaintiff acquired new counsel on appeal.

The trial court granted the Christoph defendants' motion for summary disposition, finding that plaintiffs failed to bring this action within the statute of limitations. The claims against the Barnett defendants were dismissed by stipulation.

This Court will review the grant or denial of a motion for summary disposition de novo. *Dewey v Tabor,* 226 Mich App 189, 192; 572 NW2d 715 (1997). In deciding a motion for

summary disposition under MCR 2.116(C)(7), a court must accept all of plaintiff's well-pleaded allegations as true and construe them most favorably to plaintiff. *Maddox v Burlingame,* 205 Mich App 446; 517 NW2d 816 (1994).

A legal malpractice claim must be brought within two years of the date the attorney discontinues serving the client, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. *Id.;* MCL 600.5838(2). The issue in this case is limited to the application of the six month discovery rule.

A plaintiff is deemed to have discovered a cause of action when the plaintiff discovers, or through the exercise of reasonable diligence should have discovered an injury and its possible cause. *Gebhardt v O'Rourke*, 444 Mich 535, 545; 510 NW2d 900 (1994). A plaintiff need only be aware that he has a possible cause of action, not that he has a likely cause of action. *Id.*, 544. Once a plaintiff is aware of an injury and its possible cause, he is equipped with the necessary knowledge to preserve and diligently pursue his claim. *Poffenbarger v Kaplan*, 224 Mich App 1, 11; 568 NW2d 131 (1997). The law imposes a duty to pursue the resulting legal claim. *Moll v Abbott Laboratories,* 444 Mich 1, 29; 506 NW2d 816 (1993).

The record shows that plaintiff was aware of the existence of his claim more than six months prior to the filing. Plaintiff complained of counsels' deficiencies to both MAACS and the AGC well before the six-month period began. Plaintiff's letters address counsel's failure to raise issues he discussed with counsel, including a substantive challenge to the conviction that was reversed. Plaintiff did not have to receive post-conviction relief to be aware of the injury he suffered and its cause. *Gebhardt, supra,* 547.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Richard Allen Griffin